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27 Attorneys for Defendant

28 **UNITED STATES DISTRICT COURT**

1 **EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION**

2 **SALVADOR ROBLES**, individually and on
3 behalf of others similarly situated,

4) **CASE NO. 2:13-CV-00161-JAM-AC**

5)

6) **CLASS ACTION**

7)

8) **STIPULATION AND ORDER RE: FIRST
9) AMENDED COMPLAINT AND
10) RELATED MATTERS**

11 Plaintiffs,
12 v.
13 **COMTRAK LOGISTICS, INC.**, a Delaware
14 corporation; and DOES 1 through 10,
15 inclusive,

16)

17)

18) **STIPULATION AND ORDER RE: FIRST
19) AMENDED COMPLAINT AND
20) RELATED MATTERS**

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STIPULATION

WHEREAS, on January 25, 2013, Plaintiff filed his Complaint.

WHEREAS, Defendant filed its Motion to Dismiss the entire action on March 26, 2013, with a noticed hearing date of May 15, 2013;

WHEREAS, Plaintiff anticipated filing a First Amended Complaint the same time Defendant filed its Motion to Dismiss, in order to add the same individual labor code claims on behalf of Plaintiff Robles for the time he spent as an employee of Defendant;

WHEREAS, on April 15, 2013, the parties filed a Stipulation and Proposed Order RE: Tolling Agreement and Related Matters seeking to preserve the May 15, 2013, hearing date on Defendant's Motion to Dismiss and to preserve Plaintiff's right to file a First Amended Complaint pursuant to Fed. Rule Civ. Proc. 15(a)(1)(B) after the hearing on the Motion to Dismiss;

WHEREAS, the deadline for Plaintiff to file a First Amended Complaint as a matter of right pursuant to Fed. Rule Civ. Proc. 15(a)(1)(B) was April 16, 2013;

WHEREAS, the parties have reached the following agreement, each subpart below being material and necessary to the entire agreement;

THEREFORE, the parties, through their respective counsel of record, agree to stipulate that;

(a) Defendant will withdraw its current Motion to Dismiss;

(b) Plaintiff will file a First Amended Complaint within fourteen (14) days of the date this
application is filed; and

(c) Defendant will have twenty-eight (28) days from the date Plaintiff files his First Amended Complaint to file its responsive pleading.

Following which the normal briefing deadlines will govern, tied to the hearing date for the anticipated motion to dismiss.

All parties further agree that the parties' following arguments are reserved, and not in any way impacted by this Stipulation:

(a) Plaintiff reserves the right to argue that Plaintiff's labor code claims relating to his status as an employee relate back to the January 25, 2013, filing date of the original Complaint; and

(b) Defendant's arguments that Plaintiff's claims do not relate back to the January 25, 2013, filing date of the original Complaint, and all other defenses and arguments which Defendant had available as of the date this Stipulation is filed with the Court. Defendant also reserves all other available arguments in response to the original Complaint and any First Amended Complaint.

DATED: April 22, 2013

MARLIN & SALTZMAN, LLP

By: /S/ Christina A. Humphrey
Christina A. Humphrey, Esq.
Leslie H. Joyner, Esq.
Attorneys for Plaintiff

DATED: April 22, 2013

SEYFARTH SHAW LLP

By: /S/ Timothy B. Nelson
Thomas J. Piskorski
Brandon R. McKelvey
Timothy B. Nelson
Attorneys for Defendant

ORDER

Pursuant to stipulation of the parties and good cause appearing therefore, **IT IS SO ORDERED.**

DATED: 4/23/2013

/s/ John A. Mendez

JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE